IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

FRIDAY, THE 21ST JULY 2006 / 30TH ASHADHA,1928

ST.Rev..No. 103 of 2003

TA.244/2001 of S.T.A.T.ADDL.BENCH,ERNAKULAM
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REVISION PETITIONER (ASSESSEE/APPELLANT)

M.D.JOSEPH, ASOK LIME AND BLEACHER'S
EDAYAR, MUPPATHADAM, ERNAKULAM.

BY ADV. SRI.K.B.MUHAMED KUTTY

RESPONDENT/REVENUE/RESPONDENT

STATE OF KERALA, REPRESENTED BY
SECRETARY TO GOVERNMENT, TAXES DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER (SHRI GEORGEKUTTY MATHEW)

THIS ST.REV. HAVING BEEN FINALLY HEARD ON 21.7.2006 ALONG WITH ST.REV.NOS.105/03 & 133/03, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.N. RAMACHANDRAN NAIR &
K. M. JOSEPH, JJ.

S.T.(REV) NOS.103/03, 105/03 & 133/03

Dated this the 21st day of July, 2006

C. R.

JUDGMENT

C. N. Ramachandran Nair, J.

Common question arising in all these three cases pertaining to the petitioner's sales tax assessments for the years 1994-95, 1995-96 and 1996-97, is whether the produce manufactured and sold by petitioner, namely bleaching powder, is assessable as "chemical" under Entry 29 of the First Schedule to the KGST Act, taxable at 10 per cent at the point of first sale in the State, or whether it falls under "Lime and Dehydrated lime" taxable at the reduced rate of 2.5 per cent under Entry 28 of IInd Schedule of Notification SRO No.1728/93 as claimed by the petitioner. We have heard Dr.K. B. Mohamed Kutty, learned senior counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondent.

2. Petitioner is engaged in the manufacture and sale of bleaching powder. The lion share of the production, according

to petitioner, was sold to Kerala Water Authority for treatment of water supplied for drinking purpose. According to petitioner, the item is essentially made of lime, though not lime as such and, therefore, the same is entitled to concessional rate of tax at 2.5 per cent under the Notification above referred. On the other hand, learned Special Government Pleader appearing for the respondent contended that the Notification provides for concessional rate of tax only on lime and dehydrated lime, and not for any products made out of lime.

3. The first question to be considered is whether the item comes within the description of "lime and dehydrated lime" under the Notification above referred. The manufacturing activity of the product as explained by the tribunal in its order, which is not in dispute, is as follows:

> "Bleaching powder is known as chloride of lime and is a compound of Calcium, Chlorine and Oxygen (Ca COCL). As per Encyclopaedia Britannica, bleaching powder, also known as chloride of lime, is a white solid having the odour of chlorine. It is formed by the combination of chlorine with slaked lime and is used as a bleaching and disinfecting agent."

It is obvious from the above that bleaching powder is not lime or dehydrated lime as claimed by petitioner. On the other hand, it is a chemical compound constituting of Calcium, Chlorine and Oxygen. The other name of bleaching powder, namely chloride of lime obviously indicates that lime is a major constituent of the product. However, what is covered by the Notification is admittedly lime and dehydrated lime which are one and the same and difference being that in the latter item, moisture is not present. By no means, the product bleaching powder can be identified as lime pure and simple. In the course of manufacturing, it obviously undergoes a change involving loss of identity of lime and what emerges is a new product with different odour and charactoristics. In fact, the chlorine content is what gives it the capacity to act as a disinfecting agent. In this view of the matter, we are in complete agreement with the finding of the tribunal that bleaching powder cannot be treated as lime or dehydrated lime within the meaning of the Notification above referred, entitling the petitioner for

concessional rate of tax on its sale.

4. The next question raised is whether the item can be treated as a chemical falling under Entry 29 of the Ist Schedule to the KGST Act. In this connection, we extract hereunder Entry 29 as provided in the Schedule at the relevant time:

"29. Chemicals including caustic soda, caustic potash, soda ash, sodium sulphate, sodium silicate, sulphur, chemical components and mixtures not elsewhere classified in this schedule.	At the point of first sale in the State by a dealer who is liable to tax under Section 5.	10"

The tribunal has extracted the meaning of the term "Chemical" as contained in the new Webster's Dictionary of English Language, as "a substance produced by or used in a chemical process". It is clear from the manufacturing process that bleaching powder is a chemical product manufactured from out of chemicals in a factory. In fact, petitioner himself is running a

factory manufacturing bleaching powder with the use of chlorine, lime, water, etc. Therefore, petitioner cannot deny the process in the manufacture of bleaching powder as anything different from a chemical process. The product, therefore, answers the Dictionary meaning of "chemical" as stated above. Besides this, in common parlance also, we do not think that anyone can treat bleaching powder as an item other than a chemical. Even though it may be used as a disinfectant in water purification, the same does not lead to the conclusion that it is not a chemical. In fact, it is common knowledge that excess chlorine escapes from water when bleaching powder is added for purification. The indication in the Schedule above makes it clear that apart from the generally known chemicals, even chemical components and mixtures not else-where mentioned in the Schedule are covered therein. In fact, Entry 29 is a residuary entry for all chemicals except those specifically mentioned else-where in the Ist Schedule to the KGST Act. In this view of the matter, we uphold the finding of the tribunal that the product

manufactured and sold by petitioner, namely bleaching powder answers the description of "chemical" under Entry 29 of the Ist Schedule taxable at ten per cent. However, it is open to the petitioner to claim the benefit of concessional rate, if available, for supply to organisations like Water Authority, Government Department, etc. Therefore, the Tax Revision Cases are dismissed.

C.N. RAMACHANDRAN NAIR, JUDGE

K. M. JOSEPH, JUDGE

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C.N. RAMACHANDRAN NAIR &
K. M. JOSEPH, JJ.

S.T.REV.NOS.103/03,

105/03 & 133/03

JUDGMENT

21st July, 2006.